



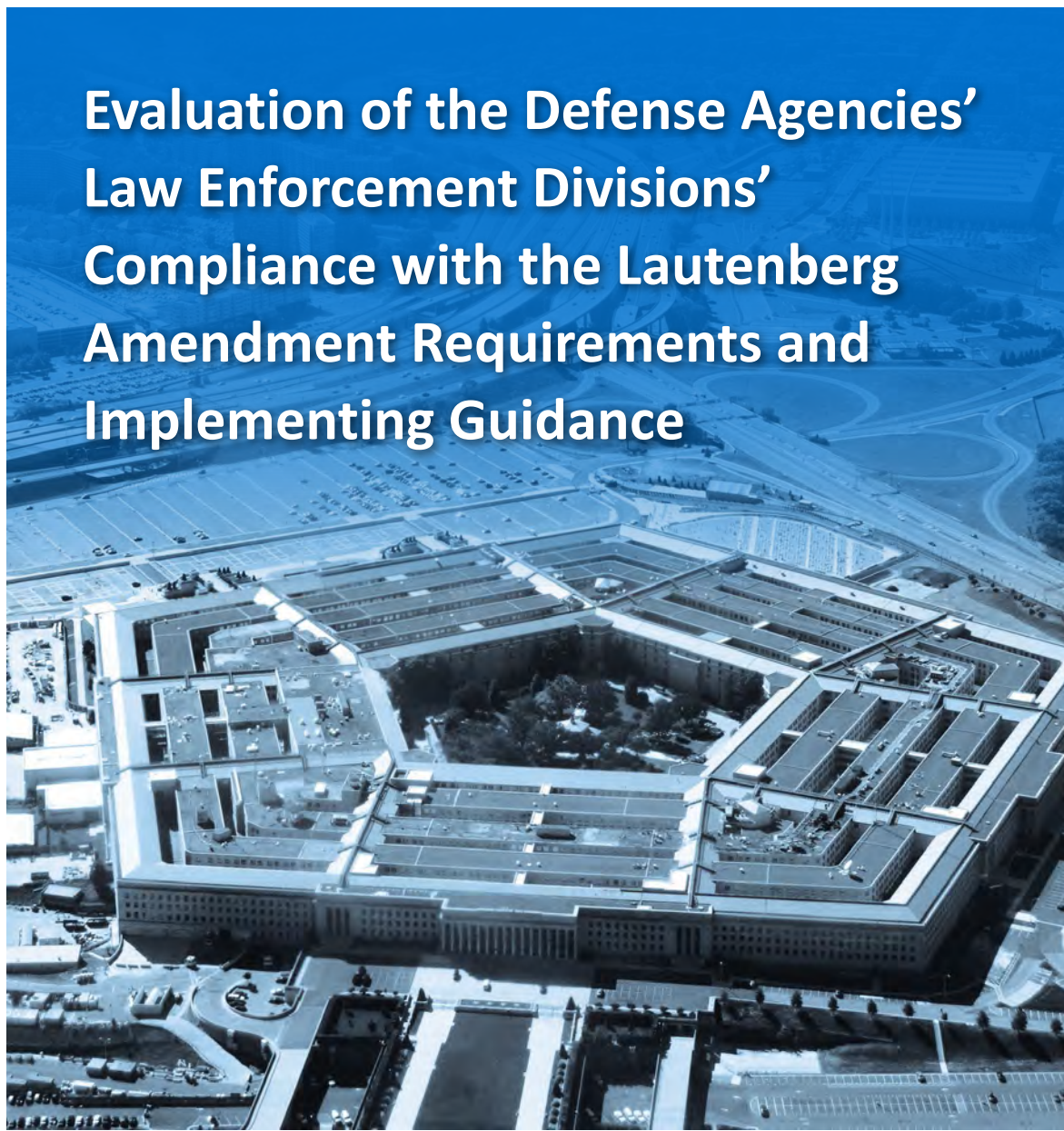
INSPECTOR GENERAL

U.S. Department of Defense

FEBRUARY 23, 2016



Evaluation of the Defense Agencies' Law Enforcement Divisions' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance



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Results in Brief

Evaluation of the Defense Agencies' Law Enforcement Divisions' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance

February 23, 2016

Objective

Our objective was to determine whether the law enforcement divisions (LED) in the Defense Intelligence Agency (DIA), Defense Logistics Agency (DLA), National Geospatial-Intelligence Agency (NGA), National Security Agency (NSA), and Pentagon Force Protection Agency (PFPA) complied with the Lautenberg Amendment as implemented by DoD Directive 5210.56, "Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities," and DoD Instruction (DoDI) 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel."

Specifically, we evaluated whether the LEDs have adequate procedures and processes to ensure:

- qualifying domestic violence convictions could be identified before an employee's entrance on duty;¹
- qualifying domestic violence convictions were reported for all personnel during their employment with the LED;

¹ DoDI 6400.06 defines qualifying domestic violence convictions as state or Federal convictions for misdemeanor crimes of domestic violence, felony crimes of domestic violence (adjudged on or after November 27, 2002), or general or special court-martial convictions for Uniform Code of Military Justice offenses otherwise meeting the elements of a crime of domestic violence.

Objective (cont'd)

- qualifying domestic violence convictions were documented; and
- required personnel actions were taken if a qualifying domestic violence conviction was discovered or occurred after an employee entered on duty.

Finding

We determined that the LEDs fully complied with the Lautenberg Amendment requirements as implemented by DoDD 5210.56, DoDI 6400.06, and the LEDs' agency guidance. We reviewed the agencies' policies and determined that the policies comport with the Lautenberg Amendment as implemented by DoDD 5210.56 and DoDI 6400.06. We also conducted a randomly selected statistical sampling of the agencies' personnel records and found that the DD Forms 2760 were completed and filed correctly. We noted that DIA, NGA, NSA, and PFPA exceeded the requirements of DoDI 6400.06 by requiring their employees to recertify annually that they do not have a qualifying domestic violence conviction. Furthermore, DIA, NGA, and PFPA went beyond policy requirements when they implemented internal processes to conduct annual records checks of personnel in covered positions, helping ensure that the divisions did not issue firearms or ammunition to anyone with a qualifying domestic violence conviction. Therefore, we are not making any recommendations.

Recommendations Table

| Management | Recommendation Requires Comment | Additional Comments Required |
|---|------------------------------------|---------------------------------|
| Director, Defense Intelligence Agency | None | None |
| Director, Defense Logistics Agency | None | None |
| Director, National Geospatial-Intelligence Agency | None | None |
| Director, National Security Agency | None | None |
| Director, Pentagon Force Protection Agency | None | None |



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

February 23, 2016

MEMORANDUM FOR DIRECTOR, DEFENSE INTELLIGENCE AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
DIRECTOR, NATIONAL SECURITY AGENCY
DIRECTOR, PENTAGON FORCE PROTECTION AGENCY

SUBJECT: Evaluation of the Defense Agencies' Law Enforcement Divisions' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance (Report No. DODIG-2016-053)

We evaluated the Defense Agencies' Law Enforcement Divisions' (LEDs) compliance with the requirements of the Lautenberg Amendment as implemented by DoD Directive (DoDD) 5210.56, "Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities," and DoD Instruction (DODI) 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel." We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency, "Quality Standards for Inspection and Evaluation."

We determined the LEDs fully complied with the Lautenberg Amendment requirements as implemented by DoDD 5210.56, DoDI 6400.06, and the LEDs' agency guidance. We noted that Defense Intelligence Agency (DIA), National Geospatial-Intelligence Agency (NGA), National Security Agency, and Pentagon Force Protection Agency (PFPA) exceeded the requirements of DoDI 6400.06 by requiring employees to recertify annually that they do not have a qualifying domestic violence conviction. Further, DIA, NGA, and PFPA went beyond policy requirements when they implemented internal processes to conduct annual records checks of personnel in covered positions, helping ensure the divisions did not issue firearms or ammunition to anyone with a qualifying domestic violence conviction. Therefore, we are not making any recommendations.

We appreciate the courtesies extended to the staff. Please direct questions to [REDACTED]

A handwritten signature in black ink, appearing to read "R. Stone", is positioned above the name of the Deputy Inspector General.

Randolph R. Stone
Deputy Inspector General
Policy and Oversight

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Acronyms and Abbreviations

Introduction

Objective

Our objective was to determine whether the law enforcement divisions² (LEDs) within:

- Defense Intelligence Agency (DIA);
- Defense Logistics Agency (DLA);
- National Geospatial-Intelligence Agency (NGA);
- National Security Agency (NSA); and
- Pentagon Force Protection Agency (PFPA),

complied with the Lautenberg Amendment as implemented by DoD Directive (DoDD) 5210.56, “Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities,” and DoD Instruction (DoDI) 6400.06, “Domestic Abuse Involving DoD Military and Certain Affiliated Personnel.” The evaluation focused on whether the LEDs had adequate procedures to ensure:

- a qualifying domestic violence conviction (briefly discussed in the DoD Policy section of this report) could be identified before an employee’s entrance on duty;
- qualifying domestic violence convictions were reported for all personnel during their employment with the LED;
- qualifying domestic violence convictions were documented on DD Forms 2760³, “*Qualification to Possess Firearms or Ammunition*,” as required by DoDI 6400.06; and
- personnel actions were taken if a qualifying domestic violence conviction was discovered or occurred after an employee entered on duty.

² The positions we evaluated consisted of job series codes equivalent to 0083 (Police) and 1811 (Criminal Investigator).

³ The DD Form 2760 serves to inform employees of the requirements of the Lautenberg Amendment and DoD’s implementing guidance. The DD Form 2760 also provides a means for employees to certify whether or not they have been convicted of a crime of domestic violence that would disqualify them from shipping, transporting, possessing, or receiving firearms or ammunition.

Background

Federal Law

Public Law 104-208, “Domestic Violence Amendment to the Gun Control Act of 1968,” (Lautenberg Amendment) was passed in 1996. The Lautenberg Amendment prohibited, among other things, anyone convicted of a felony or a misdemeanor crime of domestic violence⁴ from possessing a firearm. The intended effect of the legislation was to extend the firearms ban to anyone convicted of a misdemeanor crime of domestic violence.⁵ In addition, the Act removed the exemption that section 925, title 18, United States Code (18 U.S.C. § 925(a)(1)) provided to police and military personnel allowing them to be armed even if they had a qualifying conviction. Thus, any member of the military or any police officer who has a qualifying misdemeanor conviction was no longer able to possess a firearm, even while on duty.

DoD Policy

The Lautenberg Amendment prohibits anyone convicted of misdemeanor crime of domestic violence from shipping, transporting, possessing, or receiving firearms or ammunition. DoDD 5210.56 implements the provisions of 18 U.S.C § 922(g)(9) of the Lautenberg Amendment, which sets forth the conditions for the carrying of firearms by certain DoD personnel, including law enforcement personnel, under specific conditions and implements policy for complying with the Lautenberg Amendment. The Directive requires DoD Components to ensure that persons carrying firearms:

- are properly screened;
- are suitable for the position; and
- have undergone the background investigation appropriate for the duties performed.

DoDD 5210.56 mandates that all personnel carrying firearms complete and submit a DD Form 2760, to disclose whether they have been convicted of a crime of domestic violence that would disqualify them from shipping, transporting, possessing, or receiving firearms or ammunition. The DoD also uses the disclosure to determine if reassignment, reclassification, or administrative action is necessary.

⁴ Prior to the passing of the Lautenberg Amendment, only individuals convicted of felony crimes of domestic violence were subject to a ban on possessing firearms and ammunition. Following the enactment of the Lautenberg Amendment, the ban was expanded to include convictions of misdemeanor crimes of domestic violence.

⁵ The United States Attorneys’ Manual, July 2013;
<http://www.justice.gov/usam/criminal-resource-manual-1117-restrictions-possession-firearms-individuals-convicted>.

DoDI 6400.06 requires Components to periodically inform its employees of the Lautenberg Amendment and its consequences. The Instruction states that DoD personnel serving in positions in which they receive or possess firearms or ammunition (known as “covered positions” for DoD civilian personnel) have an affirmative, continuing obligation to inform their supervisors if they have, or later obtain, a “qualifying conviction.” The Instruction defines qualifying convictions as “State or Federal convictions for misdemeanor crimes of domestic violence” or felony crimes of domestic violence (adjudged on or after November 27, 2002). The Instruction includes general or special court-martial convictions for Uniform Code of Military Justice offenses otherwise meeting the elements of domestic violence crimes in that definition of qualifying convictions. DoD does not apply the provisions of the Lautenberg Amendment to major weapons systems such as tanks, crew-served weapons,⁶ or aircraft.

⁶ A crew-served weapon requires more than one individual for it to function due to its complexity, such as requiring one person to load while another fires.

Finding

Law Enforcement Divisions Complied with the Lautenberg Amendment

We determined that the DIA, DLA, NGA, NSA, and PFPA complied with the Lautenberg Amendment as implemented by cited DoD policies.

LED Policies and Procedures

We reviewed the agencies' policies and determined that the policies comport with the Lautenberg Amendment as implemented by DoDD 5210.56 and DoDI 6400.06. The policies:

- contained procedures to identify domestic violence convictions before an employee's entrance on duty;
- required personnel to report qualifying domestic violence convictions should they obtain one after hiring; and
- contained personnel actions to be taken if a qualifying domestic violence conviction was discovered or occurred after an employee entered on duty.

The LEDs had processes in place that would prevent them from issuing a firearm or ammunition to anyone known to have a qualifying conviction. We observed that each of the LEDs had policies requiring compliance with the Lautenberg Amendment as a condition of employment for their LE personnel and completion of the DD Form 2760 during the hiring process as required by DoDI 6400.06. The agencies' Human Resources (HR) departments implemented procedures that allowed managers to swiftly remove access to Government-owned firearms and ammunition from those employees serving in covered positions who were accused of a qualifying domestic violence incident. Their procedures further state that if the employee was not convicted, the division may reinstate access to the firearms and ammunition. Conversely, employees found to have a qualifying domestic violence conviction would no longer be authorized to handle Government issued firearms or ammunition.

Personnel Records Validation

In order to verify the agencies ensured qualifying domestic violence convictions had been identified prior to an employee's entrance on duty we reviewed a randomly selected statistical sampling of DD Forms 2760 filed in the employees' personnel records. We used a 90-percent confidence level and a 5-percent precision rate, amounting to a total of 209 records. This consisted of 34 DIA records, 44 DLA records, 41 NGA records, 45 NSA records, and 45 PFPA records. All forms were correctly completed and filed in personnel records and none indicated the employee had a qualifying conviction. The agencies told us that no employee obtained a qualifying conviction after completing the DD Form 2760 and we validated that during our records reviews; therefore, the process for handling employee personnel actions for those convicted of a domestic violence incident was untested. However, interviews with personnel security, HR, and supervisory personnel revealed they had a complete understanding of the process that would be used should an employee obtain a qualifying conviction.

Agencies Which Exceeded Statutory Requirements

Although not mandated by DoDI 6400.06, DIA, NGA, NSA, and PFPA went beyond policy requirements by instituting an additional requirement for employees serving in covered positions to recertify via DD Forms 2760 at least annually.⁷ This annual recertification helps ensure employees disclose any qualifying convictions.

In addition to the annual DD Form 2760 recertification, DIA, NGA, and PFPA instituted an added level of employee background review. These LEDs conduct National Crime Information Center (NCIC) records checks⁸ annually on personnel assigned to covered positions. The LEDs' representatives stated this supplemented the annual recertification of DD Forms 2760. This extra step ensured that the divisions did not provide firearms and ammunition to employees serving in covered positions who have qualifying domestic violence convictions.

⁷ In DoD Inspector General Report No. DODIG-2015-078, "Evaluation of the Defense Criminal Investigative Organizations' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance," February 6, 2015, we recommended that the Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy revise DoDI 6400.06 to require all employees serving in covered positions to complete DD Forms 2760 annually. They agreed to incorporate that change in the next revision of DoDI 6400.06.

⁸ The Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Division NCIC Manual provides details on how to conduct the checks. CJIS is responsible for administering and monitoring NCIC, a law enforcement information-sharing database that allows the user to view automated criminal history records and active warrant information. CJIS also conducts regular audits of organizations with NCIC access.

Conclusion

We determined that the LEDs fully complied with the Lautenberg Amendment requirements as implemented by DoDD 5210.56, DoDI 6400.06, and the LEDs' agency guidance. We reviewed the agencies' policies and determined that the policies comport with the Lautenberg Amendment as implemented by DoDD 5210.56 and DoDI 6400.06. We also conducted a randomly selected statistical sampling of the agencies' personnel records and found that the DD Forms 2760 were completed and filed correctly. We noted that DIA, NGA, NSA, and PFPA exceeded the requirements of DoDI 6400.06 by requiring their employees to recertify annually that they do not have a qualifying domestic violence conviction. Furthermore, DIA, NGA, and PFPA went beyond policy requirements when they implemented internal processes to conduct annual criminal records checks of personnel in covered positions, helping ensure that the divisions did not issue firearms or ammunition to anyone with a qualifying domestic violence conviction that was not reported. Therefore, we are not making any recommendations.

Appendix

Scope and Methodology

We conducted this evaluation from May 2015 to December 2015 in accordance with the Council of the Inspectors General on Integrity and Efficiency, “Quality Standards for Inspections and Evaluations,” January 2012. We planned and performed the evaluation to obtain sufficient information to provide a reasonable basis for our observations and conclusions, using our assessment objectives.

Our independent evaluation included a review of the evaluated agencies’ policies and procedures for compliance with the Lautenberg Amendment for those personnel who carry firearms in the performance of their duties. We reviewed the procedures used for identifying, tracking, and accounting for personnel in covered positions who received a qualifying conviction before entrance on duty or one discovered during the life cycle of employment.

We examined the LEDs’ compliance with notification requirements for informing employees and applicants for a covered position about the provisions of the Lautenberg Amendment at all facilities where firearms or ammunition were transported, stored, issued, or disposed of. We collected and analyzed the data call response provided by each evaluated agency.

Use of Computer-Processed Data

We reviewed computer-processed data to perform this evaluation. DoD LED personnel provided data obtained from their HR management systems. The data identified the number of employees in law enforcement positions and assignment locations. The LEDs provided the information in Excel spreadsheets and Adobe PDF documents.

We tested the reliability of the data during our site visits and interviews. Specifically, we tested the quality of the employee databases and spreadsheet listings provided by the evaluated LEDs. The DoD Office of Inspector General Quantitative Methods Division provided randomly numbered rows using the Statistical Analysis System programming software. They provided sample sizes for each division based on the Financial Audit Manual, Section 450, “Sampling Control Tests,” (a 90-percent confidence level and a 5-percent precision rate) standards for low risk data sources.⁹ We used the randomly selected rows to verify that the DD Forms 2760 were filed as required by DoDI 6400.06.

We used all other computer-processed data for contextual purposes; therefore, we determined the data were sufficiently reliable for our purposes.

⁹ Small populations (under 2,000) have smaller samples. The sizes come from Selvavel and Hartman, “Statistical Sampling: Choosing the Right Sample Size,” in *The Journal of Public Inquiry*, Fall-Winter 2012-2013, pages 44-48.

Technical Assistance

The DoD Office of Inspector General Quantitative Methods Division provided technical assistance as described in the Use of Computer-Processed Data section.

Prior Coverage

During the last 5 years, the DoD Inspector General (IG) issued one report discussing the Lautenberg Amendment. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/pubs/index.cfm>.

DoD IG Report No. DODIG-2015-078, "Evaluation of the Defense Criminal Investigative Organizations' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance," February 6, 2015.

Acronyms and Abbreviations

| | |
|-------------|---|
| CJIS | Criminal Justice Information Services |
| DIA | Defense Intelligence Agency |
| DLA | Defense Logistics Agency |
| HR | Human Resources |
| LED | Law Enforcement Division |
| NCIC | National Crime Information Center |
| NGA | National Geospatial-Intelligence Agency |
| NSA | National Security Agency |
| PFPA | Pentagon Force Protection Agency |



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